



International Covenant on
Civil and Political Rights

Distr.
GENERAL

CCPR/C/SR.1396
10 April 1995

ORIGINAL: ENGLISH

HUMAN RIGHTS COMMITTEE

Fifty-third session

SUMMARY RECORD OF THE 1396th MEETING

Held at Headquarters, New York,
on Friday, 24 March 1995, 3 p.m.

Chairman: Mr. AGUILAR

later: Mr. EL-SHAFEI
(Vice-Chairman)

later: Mr. AGUILAR
(Chairman)

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The meeting was called to order at 3.20 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Initial report of Paraguay (continued) (CCPR/C/84/Add.3)

1. At the invitation of the Chairman, Mr. Caballero Gonzales, Mr. Fernandez Estigarribia, Mr. Salum Flecha and Miss Baiardi Quesnel (Paraguay) took places at the Committee table.
2. Mr. FERNANDEZ ESTIGARRIBIA (Paraguay), responding to the concerns raised by several Committee members with regard to the statement in paragraph 5 of the report (CCPR/C/84/Add.3) that the Constitution provided for the denunciation of international human rights treaties said that imprecise drafting of the report had been misleading: human rights treaties could only be denounced through a constitutionally approved procedure which was significantly more difficult to achieve than the text of the report indicated. He drew attention to paragraph 6 of the report, which stated that human rights treaties could be denounced only after a period of three years and on the initiative of one quarter of one of the chambers of Congress, or 30,000 voters or the President of the Republic. For approval, an absolute majority was required in both chambers, and not just in the initiating chamber, as the report incorrectly stated.
3. The 1992 Constitution had abolished the death penalty, although it still existed in the Penal Code, which dated back to 1914 and was currently under review. In addition, Paraguay supported international efforts to abolish the death penalty world wide.
4. Mr. CABALLERO GONZALES (Paraguay), replying to questions concerning the progress of investigations into the human rights violations committed by the Stroessner regime, said that archives, including the "Terror File", detailing the political repression during that time and containing microfilms of all relevant documents were available to anyone who wished to review them.
5. Mr. SALUM FLECHA (Paraguay) added that the "Terror File" had been used as evidence in several legal proceedings against military officials and police officers who had been found guilty of human rights violations. More than 25 such trials were currently in progress. A former police chief had recently been sentenced to 30 years in prison for his role in the deaths of young political activists. The public record of legal proceedings was available from the Department of Public Prosecutions. Unlike some Latin American countries, Paraguay had rejected proposals to issue a law on pardons demonstrating the political will of the Government to pursue prosecution of individuals responsible for human rights violations. Extradition proceedings had also been initiated against some former ministers of the Stroessner Government to force them to return to Paraguay and stand trial.
6. Mr. CABALLERO GONZALES (Paraguay) said that children born out of wedlock were equal before the law, as indicated in paragraph 47 of the report, and that while they were not entitled to inherit joint property accumulated during their

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parents marriage, there was no restriction regarding their right to inherit the personal assets of either parent. With regard to de facto unions, article 120 of the Code of Civil Procedure stated that after a five-year period, a de facto union had full validity and was recognized as being tantamount to marriage.

7. In reply to questions about irregularities in the penitentiary system, he said that three draft penal codes were under review by the Congress which would form the basis for a reform of the Penal code. The 1992 Constitution had abolished the death penalty; in fact, no one had been sentenced to death in Paraguay since 1928. Since 1980, adultery had ceased to be considered a crime punishable by law.

8. Like the Penal Code, the penitentiary system was also undergoing reform. In order to address a shortage of prisons, the equivalent of \$8 million had been allocated in the current fiscal year to build new prisons, find alternatives to incarcerating and introduce crime prevention measures. At present, minors were kept in separate buildings from adults, as were convicted criminals from individuals awaiting trial, but within the same facility. Past abuses of pre-trial detention had decreased, as judges now accepted the presumption of innocence set forth in article 17 of the new Constitution and minor crimes were no longer punishable by prison. Prison inmates were given the opportunity to meet with visiting judges without any prison officials being present. As a result of such visits, the Supreme Court had ruled that certain forms of solitary confinement should be abolished.

9. Under the law, minors under the age of 14 could not be tried and sentenced by the ordinary courts, but were subject to disciplinary measures to be decided upon by Juvenile Court judges. Recently, a programme for the rehabilitation of minors under the age of 14 had been introduced with the aid of certain foreign countries including Germany. If that programme proved to be successful, it could be extended to minors between the ages of 14 and 20, who were old enough to be prosecuted. With regard to minors testifying in court, the Code of Civil Procedure stipulated that minors aged 18 to 20 could testify in a court of law as witnesses, while those under the age of 18 could testify only to give ordinary information. Furthermore, minors aged 18 and above could testify regarding events that had taken place up to four years prior to the date of testimony. In reply to a question regarding compensation for victims of miscarriage of justice, he said that a new law providing for such compensation was soon to be issued.

10. Mr. SALUM FLECHA (Paraguay) noted that in certain cases, compensation was provided to victims at the time of sentencing. In one instance, Napoleon Ortegas, a well-known individual in Paraguay who had been imprisoned indefinitely by the Stroessner Government, had been appointed to a high post in the Ministry of Education and Worship. By that appointment the Government had sought to provide some compensation to an individual who had suffered extensively.

11. In the area of education, officials in the Ministry of Education and Worship had been working for the past three years on various programmes to make education in human rights part of the regular curriculum. Thousands of educators at the primary and secondary levels had been trained nationwide to

teach respect for human rights in the schools and to explain the Convention on the Rights of the Child. During the last fiscal year, 20 per cent of the national budget had been allocated for education, to provide new schools and supplies and to combat illiteracy in Paraguay by expanding education opportunities. As a result of educational reform in Paraguay, Guaraní, an official language of the country spoken by 85 per cent of the population, was now taught along with Spanish during the first three years of primary school. By conducting classes in both languages, primary school pupils gradually learned to read and write Spanish, which had helped to curtail the high drop-out rate at that level.

12. With regard to voting rights, all citizens over the age of 18 were eligible to vote in any election. Only those individuals who were enrolled in a police or military academy were not allowed to vote, a restriction that had been introduced to avoid such individuals from being subjected to pressure or manipulation in connection with their vote. Complaints lodged with human rights organizations about improper treatment of minors and adults by the police had led to a number of investigations of the police and to the release of certain individuals. Some police officers had been tried and sentenced, while others had been relieved of their duties. In any event, members of the police force in no way enjoyed impunity.

13. Complaints regarding electoral matters could be brought before special electoral tribunals, and a higher electoral tribunal was to be established as the court of final appeal for disputes concerning national and intra-party elections.

14. Turning to the question of Paraguay's indigenous population, he said that there were 17 recognized ethnic groups in the country, numbering approximately 100,000 persons. An entire chapter of the Constitution was devoted to their rights. Paraguay was one of the few that had ratified Convention 169 of the International Labour Organization concerning Indigenous and Tribal Peoples in Independent Countries, thereby providing its indigenous peoples with broad judicial guarantees. A government body was responsible for improving their access to education, protecting their cultural heritage and dealing with territorial matters.

15. The Ombudsman, who was a member of Parliament, was responsible primarily for defending human rights, appropriately channelling complaints and protecting community interests. Following a meeting of Latin American ombudsmen held in his country in 1994, a bill on the role of the Ombudsman had been further revised and was receiving favourable consideration in Parliament.

16. There were no legal restrictions on the press in his country, and many new radio stations and publications had come into existence since 1989.

17. Mr. CABALLERO GONZALEZ (Paraguay) said that the forced recruitment of minors was prohibited by law and that conscientious-objector status was easy to obtain and was guaranteed through the judicial process. All complaints of human rights violations would be investigated and, where appropriate, punishment would be meted out.

18. The Constitution stipulated which rights could be restricted upon such a declaration of a state of emergency. Congress must approve such a declaration within 48 hours, a measure which prevented improper action on the part of the executive branch, and Congress also had the power to lift the state of emergency. An individual who had been detained under a state of emergency could seek an executive order enabling him to leave the country.

19. Mr. SALUM FLECHA (Paraguay) added that departure in those circumstances in no way implied forced exile. No state of emergency had been declared since 1989, and the executive power was required by the Constitution to inform the Supreme Court of Justice of the status of any persons so detained.

20. With respect to the dissemination of information on international human rights instruments, many seminars and workshops had been held, publications had been issued and the school curriculum specifically focused on the Covenant, the Pact of San José and the Convention on the Rights of the Child.

21. A new penal code was being prepared in which harsher provisions were envisaged for crimes against the integrity and security of the person. The male progenitor was in fact punished in cases of abortion, particularly if the person involved was a close relative of the pregnant woman. Anyone who incited another person to commit suicide was liable to punishment.

22. The constitutional provision recognizing the role of the Roman Catholic Church was purely a declarative text intended to recognize the Church's role in the country's history, particularly in the light of its firm opposition to the military dictatorship. That recognition did not imply that the Church enjoyed any privileges or a status superior to that of other religions. In addition, it was no longer a requirement that the President must be a Roman Catholic.

23. Mr. CABALLERO GONZALEZ (Paraguay), referring to the transmission of nationality, said that under article 146, paragraph 3, of the Constitution, children who were born to a Paraguayan father or mother and who resided in Paraguay were deemed to be Paraguayan. As to the political rights of foreigners, they were entitled to vote only in municipal elections. No other restrictions of any kind were imposed on foreigners.

24. A far-reaching overhaul of the judicial, penal and prison systems was under way. For example, judges were being relieved of many administrative duties in order to speed up proceedings, steps were being taken to combat corruption among judges and to improve the monitoring of the judiciary, plans to establish a training institution for judges were being considered and an alternative dispute resolution system was under study. A key feature of the Constitution was that it was now possible to invoke habeas corpus before any court of first instance, whereas previously such a step had to be taken before the Supreme Court of Justice.

25. Mr. SALUM FLECHA (Paraguay) said that the new Labour Code established clear rules for the exercise of the constitutionally guaranteed freedom of association and freedom to establish trade unions, in keeping with the relevant international norms.

26. Mr. CABALLERO GONZALEZ (Paraguay) said that the constitutional provision establishing the irremovability of judges marked a significant improvement over earlier procedures. Judges were now appointed initially for a period of five years and, if confirmed for two terms following the term of appointment, were irremovable until retirement. Candidates for governor who were not natives of the department concerned must have resided there for at least five years.

27. Mr. SALUM FLECHA (Paraguay) said that a nationwide family planning and health programme under the auspices of the Ministry of Public Health and Social Welfare had been in operation for several years. Improved training and education regarding birth control had led to a decline in the number of abortions. The status of women in general had assumed increased priority, and considerable progress had been made in that area through the efforts of women's groups and non-governmental women's organizations and through changes in the civil code and the draft Penal Code, including harsher penalties for crimes against women.

28. As to the promotion and dissemination of human rights instruments, his country, with the assistance of the Centre for Human Rights, was elaborating a national plan covering all aspects of civil and political rights, with a view to establishing priorities, with the participation of all sectors, for the promotion and dissemination of human rights information, relevant education and the adaptation of domestic legislation to international human instruments.

29. Mr. CABALLERO GONZALEZ (Paraguay) said that judicial proceedings involving children from 10 to 14 years of age were intended to protect such minors rather than to pass judgement on them. He noted also that major revisions to the provisions of the Penal Code relating to homicide were being made. In no circumstances did military tribunals have jurisdiction in civil matters. The Supreme Court of Justice settled jurisdictional disputes between civil and military tribunals.

30. Mr. El-Shafei (Vice-Chairman) took the Chair.

31. Mr. FERNANDEZ ESTIGARRIBIA (Paraguay), replying to a question from Mrs. MEDINA QUIROGA, said that any move to denounce the Covenant would be pursued under article 290 of the Constitution, relating to amendments. There was no precedent in his country for such an action, since it had never ratified such a covenant before. No constitutional amendments were currently under consideration and any amendment would require the approval of an absolute majority of each chamber of Congress.

32. Mr. PRADO VALLEJO said that the replies given by the representatives of Paraguay had further clarified the human rights situation in that country. He was particularly pleased to note that the Covenant was now embodied in Paraguayan legislation, that the Constitutional had substantially enhanced the prospect for democracy and that the reporting State had made considerable progress in complying with its obligations under the Covenant.

33. Nevertheless, a few concerns persisted. He continued to believe that exaggerated pre-eminence was given to the Catholic Church and that, consequently, other religions might not be sufficiently protected. Adequate

steps must be taken to investigate violations of human rights committed during the military regime and to punish those who were guilty. Impunity must not be tolerated.

34. He also urged that firm action should be taken to ensure that amnesty would never be granted for gross violations of human rights. Furthermore, the Constitution was not sufficiently clear as to what provisions could not be derogated from under article 4 of the Covenant; legislation should be adopted to spell that out.

35. There seemed to be problems in practice with the legislation regarding conscientious objection and the possibility of performing alternative service, and the Government must see to it that the law was applied. Also, military officers must be controlled to prevent mistreatment of enlisted men, a subject of considerable complaint.

36. Mr. POCAR, complimenting the delegation on its serious, frank report and exchanges with the Committee, lauded Paraguay's efforts to extricate the country from the former system of dictatorship. It had submitted itself from the start to international scrutiny by acceding to international human rights instruments and accepting the jurisdiction of international machinery. He was confident that the Government would strive for further improvement, especially by amending the criminal codes. He welcomed the fact that Paraguay, unlike other Latin American countries, had refrained from adopting amnesty laws, for amnesty created a climate of impunity that could encourage continuing human rights violations and impede democracy. He was concerned, however, at information received from non-governmental organizations indicating that the Government was considering the passage of certain "soft" amnesty laws, and he hoped that that was only a rumour.

37. Mrs. MEDINA QUIROGA, noting the enormous progress the Government had made in building a solid democracy, observed that it was important to use the law to point the way for society. Yet under Paraguayan law, the status of women for instance, was anachronistic, and the distinctions established even in 1990 legislation on infanticide, rape and abortion were not up to international standards of equality. In those areas, the weight of the Catholic religion, which many believed enjoyed inordinate legal privileges in the country, made itself felt.

38. She was pleased that the use of pre-trial detention was on the decline owing to the implementation of article 17 of the new Constitution and recent legislation. The problem, however, would not be resolved so quickly, especially because there seemed to be a tradition in Latin America that a prisoner must suffer before being brought to trial.

39. The Government was to be commended for allocating such a large proportion of its budget to education and for resisting the declaration of an amnesty for crimes committed under the dictatorship.

40. Mr. ANDO said that some remaining points of concern for him were the issue of compensation for past human rights violations under the long dictatorship, the equality of spouses in marriage and divorce, and certain requisite reforms

of criminal procedure. More information was still needed on the use of Guarani in the criminal courts, and on the specific voting rights of aliens.

41. Obviously, a country and the minds of its people could not be changed overnight. An ongoing campaign had to be waged against illiteracy, but there must also be a more radical campaign to restructure the entire society, especially by redistributing the wealth. He was heartened by the good will of the delegation, and in Paraguay's second report it would become clear how far the country had gone in the positive direction upon which it had embarked.

42. Mrs. EVATT said that it was her strong impression that the Government had high ambitions to reform its laws and the energy to do so. Changes, however, must be achieved in practice, and time was needed to allow legislative change to penetrate.

43. Particularly praiseworthy were Paraguay's commitment to the prosecution of past human rights violations and the compensation of victims; its programme of human rights education, a genuine building for the future; its adoption of the new Constitution and its intention to accede to the second Optional Protocol; and its creation of a Human Rights Commission in the Chamber of Deputies itself, which helped establish responsibility for human rights squarely within the democratic process.

44. She associated herself with the remarks of Mrs. Medina Quiroga, especially with reference to the position of women and the need for reforming antiquated laws. Also, she was concerned about the restrictions on voting rights in Paraguay, even though article 25 of the Covenant did allow for reasonable restriction. If adequate provisions were made for secrecy of voting, such limitation would be unnecessary.

45. Mr. BÂN observed that the optimism of the report seemed to reflect a genuinely good human rights situation in the country, despite the difficulties of the transition to democracy. An excellent Constitution had been adopted, evincing a strong commitment to human rights. There also seemed to be a determination not to leave the massive human rights violations of the past unpunished and a willingness to educate the population in human rights.

46. Much legislation was still needed to ensure enjoyment of the rights guaranteed under the Constitution. That was his main concern and presumably also that of the Government. Laws were needed, for instance, to compensate victims of human rights violations; criminal laws regulating the death penalty, abolished under the Constitution, must be repealed. Criminal legislation must also be brought into line with the Constitution as regarded pre-trial detention, and with article 10 of the Covenant as regarded the lack of segregation in prisons between prisoners awaiting trial and convicted prisoners. Implementing legislation, too, must be adopted to establish a pluralistic media in the service of freedom of expression.

47. He looked forward to the next report indicating what progress had been made and containing further information on the actual situation in the country.

48. Mr. Aguilar resumed the Chair.

49. Mr. KLEIN observed that Paraguay must rid itself of an onerous legacy, a task that needed time and tremendous effort. The Government had to do everything possible to throw light on the past crimes of the dictatorship and it must educate the people and public officials in the understanding of human rights. Much had already been achieved: a new constitutional order had been established, based on the rule of law and on human rights, and the Covenant had been given high standing in that legal order.

50. The legislative foundation must, however, be made to stand the test of reality. The reform process in the country had not yet reversed all the *de facto* and sometimes *de jure* problems. Prison conditions must continue to be improved. Also, he hoped that the next report would address his concerns about the issue of bribery and corruption of judges and police officers. He had been interested to learn that minors could not be punished under criminal laws but only by disciplinary measures, which he considered to be a challenging new approach.

51. Mr. BUERGENTHAL said that the picture the report presented of the situation in Paraguay had been extremely encouraging, and the youthful enthusiasm of the delegation itself gave one hope for the future. Its openness about the problems in the country had been gratifying.

52. Paraguay had adopted an impressive Constitution and undertaken legislative reforms - all in less than six years. It was especially significant that Paraguay had ratified both the Covenant and the Optional Protocol and accepted the jurisdiction of the Inter-American Court of Human Rights, a signal that its Government was really serious. The country was in the process of restructuring and re-educating a whole society from top to bottom. He agreed with Mrs. Medina Quiroga that for such a society, just emerging from a dictatorship, nothing was as important in the long run as the educational effort.

53. He congratulated Paraguay for not having adopted an amnesty or any punto final legislation and for having resisted the temptation to sweep the past under the rug, something which never worked. It would be useful in the next report to devote more space to actual practice and less to the legislation. Nevertheless, the Government needed to establish a commission to review all its laws in the light of international standards.

54. Mr. KRETZMER said that he had been encouraged by the way in which Paraguay was making the transition to a democracy, and he commended its tremendous strides towards establishing institutions to protect human rights and comply with the provisions of the Covenant. He shared the concerns expressed by other members of the Committee concerning the status of women, penal procedure and the continued reports of human rights violations by members of the security forces and the police in Paraguay. It had been very interesting to learn about the training programmes for the security forces and the police, which were an essential mechanism for reducing human rights violations. In that regard, he stressed the need to set up institutional mechanisms for the immediate investigation of alleged violations and underscored the importance of publicizing the existence of those mechanisms so that all people in Paraguay would know that they could complain about abuses and that their complaints would be investigated in an effective manner.

55. Mr. FRANCIS commended the Government of Paraguay for its very encouraging initial report. In view of the country's stagnating economy, it was essential to improve per capita income in order to have surplus revenue for social services. The representatives Paraguay had indicated that instructors in the security forces could not vote in elections. The Government should take account of the fact that article 25 of the Covenant did not provide for such exceptions.

56. It was heartening to learn of the Government's commitment to instilling respect for human rights through education in the schools. The Committee had underscored the great importance of teaching programmes on human rights for the members of the security forces and the need to define clearly the spheres of competence of the various judicial bodies in view of the courts' essential role in ensuring observance of human rights. Lastly, it was gratifying to note that Paraguay would soon sign the second Optional Protocol to the Covenant.

57. Mr. CABALLERO GONZALEZ (Paraguay) said that his country would take account of all the recommendations made by the Committee. His Government had no intention of enacting an amnesty law and would continue its efforts to prosecute and punish those found guilty of human rights violations under the dictatorship. Paraguay intended to adapt all its legislation in order to comply with the provisions of the Covenant.

58. The CHAIRMAN expressed satisfaction with the frank and fruitful dialogue that had taken place with the delegation of Paraguay and said that the Committee had concluded its consideration of that country's initial report.

The meeting rose at 5.40 p.m.